

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL SALISBURY,

No. C-06-2993 MMC

Plaintiff,

**ORDER GRANTING BERKELEY  
OFFICERS' MOTION TO DISMISS;  
VACATING HEARING**

v.

DETECTIVE MICHAEL WARD, et al.,

(Docket No. 26)

Defendants.

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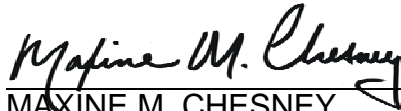
Before the Court is the motion filed September 1, 2006 by defendants Sgt. Michael Dougherty and Officer Samantha Speelman (jointly, "Berkeley officers") to dismiss the claims asserted against them, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff Michael Salisbury has filed an "opposition" to the motion, in which he does not contest the merits of the Berkeley officers' arguments for dismissal but, rather, seeks leave to amend his complaint to drop the state law claims asserted against the Berkeley officers and to clarify the basis of his federal claim. The Berkeley officers have filed a reply. Having considered the papers filed in support of and in response to the motion, the Court finds the matter appropriate for resolution without oral argument, see Civil L.R. 7-1(b), hereby VACATES the October 20, 2006 hearing, and rules as follows.

As plaintiff does not contest the merits of the Berkeley officers' motion to dismiss the existing claims, and good cause appearing, the motion to dismiss is hereby GRANTED.

1 In its September 5, 2006 order granting defendant Lance Sandri's motion to dismiss  
2 with leave to amend, the Court noted that plaintiff may amend his allegations against the  
3 Berkeley officers as a matter of right, and afforded plaintiff leave to file, no later than  
4 October 27, 2006, an amended complaint setting forth his amended claims against Sandri  
5 and the Berkeley officers.<sup>1</sup> Accordingly, no later than October 27, 2006, plaintiff may file an  
6 amended complaint setting forth his amended claims against Sandri and the Berkeley  
7 officers.

8 **IT IS SO ORDERED.**

9 Dated: October 17, 2006

  
MAXINE M. CHESNEY  
United States District Judge

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27 <sup>1</sup> "A motion to dismiss is not a 'responsive pleading' within the meaning of Rule 15"  
28 of the Federal Rules of Civil Procedure. See Crum v. Circus Circus Enterprises, 231 F.3d  
1129, 1130 n.3 (9th Cir. 2000).